

LARGE CONCENTRATED ANIMAL FEEDING OPERATIONS

(CAFOs)

Final Report of the Land and Water Resources Council

to the

Joint Standing Committee on Agriculture, Conservation, and Forestry

January 1999

(second printing)

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January 22, 1999

Senator John M. Nutting, Chair
Representative Wendy Pieh, Chair
Members
Joint Standing Committee on Agriculture, Conservation and Forestry
Maine Legislature
115 State House Station
Augusta, Maine 04330

RE: Land and Water Resources Council recommendation; regulation of large CAFOs

Dear Senator Nutting, Representative Pieh, and Committee members:

As chair of the Land and Water Resources Council ("Council")¹, I am writing to provide the Joint Standing Committee on Agriculture, Conservation, and Forestry with the Council's recommendation, pursuant to P.L. 1997 c. 642, Section 8, regarding regulation of large concentrated animal feeding operations ("large CAFOs") . Attached to this report as an appendix is the report of the Large CAFO Working Group, which studied this issue and reported its findings to the Council in accordance with P.L. 1997, c. 642.

Background

P.L. 1997 c. 642, Section 8² requires the Council to make a recommendation regarding State regulation of large CAFOs, including any necessary legislation, to the Legislature's Agriculture, Conservation, and Forestry Committee. The Legislature directed the State Planning Office ("SPO") to coordinate a study of "federal and state laws and regulations pertaining to large

¹ The Land and Water Resources Council is established by 5 M.R.S.A. § 3331. The Council's membership is as follows: the Commissioner of Agriculture, Food, and Rural Resources, the Commissioner of Conservation, the Commissioner of Environmental Protection, the Commissioner of Human Services, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources, the Commissioner of Transportation, the Commissioner of Economic and Community Development or the Commissioner's designee, and the Director of the State Planning Office. The Governor appoints the Chair, and has appointed the State Planning Office Director to chair the Council. The basic purpose of the Council is to advise the Governor, the Legislature and State agencies in the formulation of policies for management of the State's land and water resources to achieve state environmental, economic, and social goals.

² P.L. 1997 c. 642 is attached as Appendix A.

concentrated animal feeding operations³ and assess the potential impacts of large [CAFOs].” *Id.* The Legislature directed that report be provided to the Council and that the Council in turn make “recommendations for a permit process to regulate new large [CAFOs]” that “include[s] provisions for a public hearing prior to issuing a permit for a new large [CAFO].” *Id.* The law directed that the Department of Environmental Protection ("DEP") and the Department of Agriculture, Food and Rural Resources ("DAFRR"), and the Maine Land Use Regulation Commission ("LURC") to participate in the study and involve in addition pertinent stakeholders. With assistance from DEP, LURC, and DAFRR, SPO organized the Large CAFO Working Group to carry out the study.

The working group was comprised of representatives of the above noted agencies, other federal and State natural resources agencies, farmers, and concerned citizens. The working group conducted a study focused on design of a permitting system for large CAFOs and made a report to the Council of its findings with draft legislation. The working group did not reach consensus on a legislative recommendation. The working group's report and draft legislation are attached as Appendix B. The working group did achieve conceptual agreement, however, on the need for a State permit for all new large CAFOs (proposals involving more than 1000 animal units as well proposals involving 300 to 1000 animal units that may have a significant environmental impact or generate significant public interest) and on a regulatory framework for an interagency approach to permitting these new CAFOs. Disagreement over the efficacy of the proposed standards to prevent unreasonable impacts from industrial-scale swine feeding operations and the appropriate nature and extent of municipal regulation of CAFOs were main issues in the way of consensus.

On December 15, 1998, the Council submitted the working group's report and draft legislation to the Legislature's Joint Standing Committee on Agriculture, Conservation, and Forestry and notified the Committee at that time of the Council's intention to provide its final legislative recommendation following the Council's December 17, 1998 meeting. At its December 17, 1998 meeting, the Council discussed the working group's proposal and heard comments from citizens and legislators from the northern Maine region in which swine CAFO proposals have been proposed. Having heard these concerns, focused on the adequacy of the environmental standards in the working group's proposal to prevent adverse environmental impacts due to operation of large swine CAFOs, the Council decided to consider the issue further at its January 1999 meeting.

At its January 11, 1999 meeting, the Council agreed to recommend the attached legislation which is summarized below. The legislation recommended by the Council is a modified version of the working group's draft legislation. The primary differences involve:

³ P.L. 1997 c. 642, Section 2 defines a “large CAFO” as “a lot or facility where more than 1,000 animal units are confined and fed for a total of at least 45 days in a 12-month period.” *Id.*, § 2 (enacting 7 M.R.S.A. § 4206.) An “animal unit” is defined by P.L. 1997 c. 642, Section 1 (7 M.R.S.A. § 4201, sub-§2) as meaning “1000 pounds of animal body weight.”

- clarification that nothing in the legislation is intended to alter in any way the right of municipalities to enact ordinances in accordance with the Right to Farm law, 17 M.R.S.A. § 2805;
- extension of the current moratorium on new swine feeding operations with 500 or more animals for an additional year (until May 1, 2000);
- provision for a technical study of the best available management practices for swine feeding operations and report to the Legislature by January 1, 2000 including any recommended changes to the proposed Large Concentrated Animal Feeding Operation Act applicable to new swine operations to prevent significant adverse public health or environmental impacts from those operations;
- assumption by DEP and DAFRR (as opposed to LURC and DAFRR) of regulatory authority over large CAFOs proposed in the State's unorganized areas;
- clarification that DEP and DAFRR will jointly determine whether a project with 300 to 1000 animal units requires a permit under the proposed Large Concentrated Animal Feeding Operation Act due to potential for a significant environmental impact or significant public interest in the proposal; and
- clarification of the proposed definition of "best available management practices" required for odor control.

Overview and Summary of the Proposed Legislation

The following summarizes the attached draft legislation provided as the Council's recommendation:

- Scope and applicability; extension of current moratorium regarding certain swine feeding operations.

Through enactment of a new statute, the Large Concentrated Animal Feeding Operation Act, and corresponding amendments to the existing Nutrient Management Plan law, the legislation would require a permit for new livestock feeding operations with more than 1000 animal units (a.u.) and certain new livestock feeding operations with 300 to 1000 a.u. that may have a significant environmental impact or generate significant public interest. The new statute would not require existing livestock operations or expansions of existing livestock operations to obtain a permit. Projects subject to DEP jurisdiction under the Site Location of Development Laws, Title 38, Article 6, or LURC jurisdiction under the Land Use Regulation laws, Title 12, chapter 206-A not require a permit under the Large Concentrated Animal Feeding Operation Act but would be regulated pursuant to those existing permit programs.

Under the proposal, DEP and DAFRR would together regulate large CAFOs proposed in either the organized or unorganized areas of the State. LURC does not have a regulatory role

under the proposed bill. Livestock operations subject to the law would require a joint permit issued by DAFRR and DEP; DEP and DAFRR would jointly determine whether a project involving 300 to 1000 a.u. has potential for a significant environmental impact or has generated significant public interest. The proposal is based on recognition that DEP has traditionally been charged with reviewing the potential environmental impacts of siting new structures and that DAFRR has traditionally dealt with ongoing farming operations.

This permit requirement would apply to new operations raising all types of livestock. However, Section 12 of the proposed legislation would extend for one year (until May 1, 2000) the current moratorium on construction or operation of a new swine feeding operation with 500 or more animals enacted by P.L. 1997 c. 642, section 9. The proposed extension of the moratorium reflects the Council's recognition that there is substantial public concern in northern Maine regarding siting of new large swine feeding operations, that the Working Group's study focused primarily on design of the type regulatory system outlined in its legislative mandate, and that the additional study proposed will be useful in identifying what if any additional or different technical environmental standards should be applied to new large swine CAFOs.

The Council's proposal calls for emergency legislation with an effective date of May 1, 1999.

- Technical study

The proposed legislation calls for a study to identify the best available technologies to address environmental issues associated with swine CAFOs and requires DEP and DAFRR to seek the assistance of the University of Maine, Agricultural Experiment Station and Cooperative Extension Service in preparing the study and developing recommendations for submission to Agriculture, Conservation, and Forestry Committee and the legislative committee with jurisdiction over natural resources matters. DEP and DAFRR are required, following consultation with the Council, to submit the report on or before January 1, 2000. The report is intended to recommend specific technologies necessary to ensure that new swine feeding operations with 300 or more animal units do not adversely affect public health or the environment, and to contain any recommended legislative changes.

- Initial Point of Contact and Team Review of Application

The Council proposes that DAFRR would be the initial point of contact to which applicants would submit a permit application. DAFRR and DEP propose to assign a team with staff from both agencies to process a permit. The agencies propose to work out these details in a memorandum of agreement.

- Public Participation in the Permitting Process

The recommended legislation proposes use of the public participation process in place for applications under the State's Site Location of Development Act ("site law"), and contains several specific recommendations regarding public notice and notice to abutters and provisions for public hearings. The proposed legislation provides that a public hearing would be held for any swine production operation that requires a joint permit under this statute.

- Decision-making process

The proposed legislation requires that the Commissioners of DEP and DAFRR make permit decisions by consensus. Appeals would be heard by the Board of Environmental Protection and the board established by the Nutrient Management Plan law, sitting jointly. The boards would vote independently so that each would have an equal voice. Agreement by both boards would be needed to reverse the commissioners' decision.

- Standards

The natural resource protection standards in the proposal are modeled after provisions in the site law. Key provisions include:

No unreasonable adverse effect: The permitting agencies must find that the livestock operation will have "no unreasonable adverse effect on existing uses or the natural environment";

Odor: Applicants must use "best available management practices" *and* the proposed operation may not have an unreasonable impact on existing uses. The bill defines "best available management practices" as those state-of-the-art methods that are economically feasible from the perspective of the industry as a whole and technically feasible for the proposed operation at the proposed site. Under the bill, even if best available technology is used, the application would not be approved if the level of odor is expected to have an unreasonable effect on neighbors; and

Carcass disposal: Applicants must demonstrate that carcasses will be disposed in an environmentally appropriate manner that does not unreasonably affect existing uses.

Other standards require compliance with standards under the nutrient management planning law and storm water and sedimentation control laws, and protection of groundwater.

The bill also provides that administrative rules adopted pursuant to the site law, the nutrient management planning law, and other specified State laws are deemed adopted pursuant to the Large Concentrated Animal Feeding Operation Act to the extent that those rules are consistent with the Act.

- Relationship with other laws.

Local: The proposed bill specifies that none of its provisions are intended to alter in any way the right of municipalities to enact stricter standards by ordinance in accordance with the Right to Farm law, 17 M.R.S.A. § 2805.

Federal: Pursuant to legislative authorization, DEP is seeking delegated authority for the federal National Pollution Discharge Elimination System ("NPDES") program, which provides for licensing and enforcement regarding discharges into waters of the United States. On September 11, 1998, the United States Environmental Protection Agency and the United States Department of Agriculture issued a draft "Unified National Strategy for Animal Feeding Operations" focused on addressing potential surface and water quality problems associated with animal feeding operations. Separate and apart from the proposed legislation, DEP and DAFRR will coordinate State actions regarding implementation of NPDES permitting requirements and permitting of new CAFOs under the proposed legislation, which addresses siting issues, such as potential impacts on existing uses and odor, in addition to water quality.

Conclusion

The Council believes that the recommended legislation summarized above provides an appropriately balanced and flexible approach for the regulation of the potential environmental impacts of large CAFOs. Please let me know if you have questions or need additional information regarding this proposal or if the Council can be of further assistance on this issue.

Thank you for your consideration.

Sincerely,

Evan D. Richert, AICP

Draft legislation recommended by the Land and Water Resources Council pursuant to P.L. 1997 c. 642, Section 8

January 23, 1999

An Act Regarding Large Concentrated Animal Feeding Operations

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State is expecting that new large concentrated animal feeding operations will be proposed in the State in the near future; and

Whereas, some large concentrated animal feeding operations in other states have caused severe impacts on natural resources and existing uses and have adversely affected natural resources, health, property values, and quality of life; and

Whereas, new large concentrated animal feeding operations have the potential to create unreasonable impacts in Maine of significant concern to Maine citizens; and

Whereas, Maine agricultural businesses directly contribute \$500 million annually to the State's economy; and

Whereas, the Department of Agriculture, Food and Rural Resources, Land Use Regulation Commission, and the Department of Environmental Protection do not have the authority to adequately regulate such developments under current Maine law; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA § 4201, subsection 5-A is enacted to read:

5-A. Person. "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, federal agency, educational or charitable organization or institution or other legal entity.

Sec. 2. 7 MRSA § 4205 is repealed and replaced as follows:

§ 4205. Permit

1. Operation requiring a livestock operation permit. Beginning May 1, 1999, a livestock operation permit is required for an animal feeding operation that does not require a permit pursuant to the Large Concentrated Animal Feeding Act and meets one or more of the following criteria:

A. The operation proposes an expansion beyond the operation's manure storage capacity or land base used for spreading;

B. The operation confines and feeds 300 to 1,000 animal units for a total of 45 days or more in any 12-month period after April 15, 1998, and prior to April 15, 1998 the operation did not confine and feed 300 or more animal units; or

C. The operation is an existing concentrated animal feeding operation as defined by rules adopted pursuant to this section.

2. Prior approval of new operation; referral of 300 to 1,000 animal unit operations to Chapter 749, Large Concentrated Animal Feeding Operation Act. A person may not construct or cause to be constructed, or operate or cause to be operated, a new operation meeting the criteria in subsection 1(B) without first having obtained a livestock operation permit pursuant to this section or a large concentrated animal feeding operation permit pursuant to the Large Concentrated Animal Feeding Operation Act.

A. Following receipt of a complete application and a site inspection as provided in subsections 4 and 5, the Commissioner of the Maine Department of Agriculture, Food and Rural Resources and the Commissioner of the Department of Environmental Protection shall jointly determine, in accordance with paragraph B of this subsection, whether a new operation requires a large concentrated animal feeding operation permit because it is a facility that stables, confines, feeds, or maintains animals for a total of 45 days or more in any 12-month period and is of significant public interest or may have have a significant environmental impact. "Animals" for purposes of this subsection, means more than the number of animals specified in any of the following categories:

- (1) 300 slaughter and feeder cattle;
- (2) 200 mature dairy cattle (whether milked or dry cows);
- (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- (4) 150 horses;
- (5) 3,000 sheep or lambs;
- (6) 16,500 turkeys
- (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering);
- (8) 9,000 laying hens or broilers (if the facility has a liquid manure system);
- (9) 1,500 ducks; or
- (11) 300 animal units.

An “animal unit” is the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0. One animal unit equals 1,000 pounds.

B. The determination of whether an operation is of significant public interest or may have a significant environmental impact shall be made jointly by the Commissioner of the Maine Department of Agriculture, Food and Rural Resources and the Commissioner of the Maine Department of Environmental Protection. In making this determination, the agencies may consider, among other factors, whether a project will be operated by a owner-operator.

C. If the new operation requires a large concentrated feeding operation permit, a livestock operation permit is not required.

D. For purposes of this subsection, “new operation” does not include:

(1) An operation in possession of applicable state or local licenses to operate and in existence or under construction on a parcel of land prior to May 1, 1999; or

(2) An operation in possession of applicable state or local licenses to operate and in existence prior to May 1, 1999 that is expanded on or after that date, provided that the operation is owned by the same person who owned the parcel of land prior May 1, 1999, or is owned by a family member, devisee, or heir of that person. The number of animals stabled, confined, fed or maintained by any such person, family member, devisee or heir is not counted when the parcel of land is transferred to a person other than a family member, devisee or heir.

3. Public notice of livestock operation application

A. Within 30 days prior to filing, an applicant shall give public notice of intent to file

a new or amended application. The notice must be mailed by certified mail to abutters and to the municipal office of the municipality or municipalities in which the project is located. The notice must also be published once in a newspaper circulated in the area where the project is located and a copy of the notice of intent to file must be submitted with the application. The notice must appear in the newspaper during the week prior to the date on which the application is filed with the Maine Department of Agriculture, Food and Rural Resources. The notice must include the following information:

- (1) Name, address and telephone number of the applicant;
- (2) Citation of the statutes or rules under which the application is being processed;
- (3) Location of the activity;
- (4) Summary of the activity;
- (5) Anticipated date for filing the application with the Maine Department of Agriculture, Food and Rural Resources;
- (6) A statement providing that requests that the project be required to obtain a permit as a large concentrated animal feeding operation must be submitted to the Maine Department of Agriculture, Food and Rural Resources in writing no later than 30 days after the application is accepted as complete for processing;
- (7) A statement providing the local filing location where the application can be examined;
- (8) A statement that public comments on the application may be provided to the Maine Department of Agriculture, Food and Rural Resources together with the mailing address of the Maine Department of Agriculture, Food and Rural Resources; and
- (9) Any other information required by substantive rule or law.

After an application has been filed, if the Maine Department of Agriculture, Food and Rural Resources determines that the applicant has submitted significant new or additional information or substantially modified the application at any time after acceptance of the application as complete, the applicant shall provide additional notice to interested persons who have commented on the application. The Maine Department of Agriculture, Food and Rural Resources may require additional public notice.

4. Application. An applicant for a permit required under this section must submit to the Maine Department of Agriculture, Food and Rural Resources a nutrient management plan that meets requirements established pursuant to section 4204, and information necessary in order to determine whether approval is required pursuant to the Large Concentrated Animal Feeding Operation Act, rather than the Nutrient Management Act.

5. Site inspection. The Maine Department of Agriculture, Food and Rural and the Maine Department of Environmental Protection shall jointly visit the site of a proposed new operation meeting the criteria in subsection 1(B).

6. Meeting. The agencies shall hold a meeting with concerned citizens if requested. If the Maine Department of Agriculture, Food and Rural Resources and the Commissioner of Environmental Protection jointly determine that significant public interest remains following such a meeting, approval shall be required pursuant to the Large Concentrated Animal Feeding Operation Act. Such a meeting is not required in order for the agencies to determine that the operation is of significant public interest.

7. Rules. The Maine Department of Agriculture, Food and Rural Resources shall adopt rules in accordance with Title 5, chapter 375 to establish a process for application review and issuing livestock operation permits required under this section. The rules may establish livestock operation permit application fees, inspection requirements and procedures for review by the board of permitting decisions. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A..

Sec. 3. 7 MRSA § 4206-A is enacted to read:

§ 4206-A. No unreasonable adverse effect; maximize nutrient value. A person required to have a nutrient management plan pursuant to Section 4204, or a livestock operations permit pursuant to Section 4205, or a large concentrated animal feeding operation permit pursuant to Section 4254 must produce, manage, store, use, transport, and distribute nutrients so as to not unreasonably adversely affect existing uses, human health, air quality, water quality, or other natural resources and so as to maximize the nutrient value for the production of food, fiber, and good soil health.

Sec. 4. Part 11, heading is enacted to read:

PART 11
CONCENTRATED ANIMAL FEEDING OPERATIONS
CHAPTER 749
LARGE CONCENTRATED
ANIMAL FEEDING OPERATIONS ACT

Sec. 5. 7 MRSA § 4251 is enacted to read:

§ 4251. Purpose

The purpose of this chapter is to provide a flexible and practical means by which the State, acting through the Maine Department of Agriculture, Food and Rural Resources and Maine Department of Environmental Protection, in consultation with other appropriate state agencies, may exercise its police power to control the location of large concentrated animal feeding operations in order to ensure that such operations will be located in a manner which will have a minimal adverse impact on the natural

environment within the sites themselves and on their surroundings and protect the health, safety and general welfare of the people, and to ensure agricultural producers the opportunity to pursue agricultural production that is profitable, economically feasible, and based on sound technology and practical production techniques.

Sec. 6. 7 MRSA § 4252 is enacted to read:

§ 4252. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agencies. For purposes of this chapter, “agencies” means the Maine Department of Agriculture, Food and Rural Resources and the Maine Department of Environmental Protection.

2. Best available management practices. “Best available management practices” means state-of-the-art technology in the operation of large concentrated animal feeding operations that is economically feasible for the industry as a whole and technically feasible for the proposed operation in the proposed location.

3. Board. “Board” means the Board of Environmental Protection and Nutrient Management Board sitting jointly.

4. Large concentrated animal feeding operation. A "large concentrated animal feeding operation" or “operation” means a facility that stables, confines, feeds, or maintains animals for a total of 45 days or more in any 12-month period. “Animals” for purposes of this subsection, means

A. More than the number of animals specified in any of the following categories:

- (1) 1,000 slaughter and feeder cattle;
- (2) 700 mature dairy cattle (whether milked or dry cows);
- (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds);
- (4) 500 horses;
- (5) 10,000 sheep or lambs;
- (6) 55,000 turkeys
- (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering);
- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system);
- (9) 5,000 ducks; or
- (10) 1,000 animal units; or

B. More than the number of animals specified in any of the following categories if the

agencies determine, in accordance with this subsection, that the project is of significant public interest or may have a significant environmental impact:

- (1) 300 slaughter and feeder cattle;
- (2) 200 mature dairy cattle (whether milked or dry cows);
- (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- (4) 150 horses;
- (5) 3,000 sheep or lambs;
- (6) 16,500 turkeys
- (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering);
- (8) 9,000 laying hens or broilers (if the facility has a liquid manure system);
- (9) 1,500 ducks; or
- (11) 300 animal units.

An "animal unit" is the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0. One animal unit equals 1,000 pounds.

The determination of whether an operation is of significant public interest or may have a significant environmental impact shall be made jointly by the Commissioner of the Maine Department of Agriculture, Food and Rural Resources and the Commissioner of the Maine Department of Environmental Protection. In making this determination, the agencies may consider, among other factors, whether a project will be operated by an owner-operator.

5. Person. "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, federal agency, educational or charitable organization or institution or other legal entity.

6. Significant ground water aquifer. "Significant ground water aquifer" means a porous formation of ice-contact and glacial outwash sand and gravel or fractured bedrock that contains significant recoverable quantities of water which is likely to provide drinking water supplies.

Sec. 7. 7 MRSA § 4253 is enacted to read:

§ 4253. Applicability

This chapter applies to large concentrated animal feeding operations other than the following:

- 1. Existing large concentrated animal feeding operation.** Any large concentrated

animal feeding operation in possession of applicable state or local licenses to operate, and in existence or under construction on a parcel of land prior to May 1, 1999.

2. Expansion of existing animal feeding operation. Unless intended to circumvent this chapter, any animal feeding operation in possession of applicable state or local licenses to operate and in existence prior to May 1, 1999 that is expanded on or after that date so as to become a large concentrated animal feeding operation, provided that the operation is owned and operated by the same person who owned the operation prior to May 1, 1999, or is owned and operated by a family member, devisee or heir of that person. The number of animals stabled, confined, fed or maintained by any such person, family member, devisee or heir is not counted for purposes of determining whether a large concentrated animal feeding operation exists when the operation is transferred to a person other than a family member, devisee or heir.

"Animal feeding operation," for purposes of this subsection, means a livestock operation that has fewer animals or animal units than a large concentrated animal feeding operation.

3. Aquaculture. Any hatchery, fish farm, or other aquatic animal production facility.

4. Operation requiring a site location of development or land use regulation permit. Any operation requiring review pursuant to the Site Location of Development Laws, Title 38, Article 6, or the Land Use Regulation laws, Title 12, chapter 206-A.

Sec. 8. 7 MRSA § 4254 is enacted to read:

§ 4254. Prohibition. A person may not construct or cause to be constructed, or operate or cause to be operated, a large concentrated animal feeding operation without first having obtained approval from the agencies. A person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the agencies may not act contrary to that order or permit.

Sec. 9. 7 MRSA § 4255 is enacted to read:

§ 4255. Standards for large concentrated animal feeding operation

The agencies shall approve a large concentrated animal feeding operation whenever they find the following.

1. Financial capacity. The applicant has the financial capacity to develop the operation in a manner consistent with the provisions of this chapter. The agencies may issue a permit under this chapter that conditions any site alterations upon an applicant providing evidence that the applicant has been granted a line of credit or a loan by a financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A or with evidence of any other form of financial assurance the

agencies determine to be adequate.

— **2. Technical ability.** The applicant has the technical ability to develop the operation utilizing best available management practices and in a manner consistent with the provisions of this chapter. The agencies may consider, among other factors, the applicant's prior conduct in operating an animal feeding operation in determining whether this standard has been met.

— **3. No unreasonable adverse effect on existing uses or on the natural environment.** The applicant has made adequate provision for fitting the operation harmoniously into the existing natural environment and the operation will not unreasonably adversely affect existing uses, scenic character, air quality, water quality, historic or archaeological sites, unusual natural areas, significant wildlife habitat, or other natural resources in the municipality or in neighboring municipalities.

4. Soil types. The proposed operation will be built and operated on soil types that are suitable to the nature of the undertaking.

5. Storm water management and erosion and sedimentation control. The proposed operation meets the standards for the management of storm water runoff from impervious areas in 38 M.R.S.A. section 420-D and the standard for erosion and sedimentation control in 38 M.R.S.A section 420-C.

6. Ground water. The proposed operation will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur, which includes no unreasonable risk that the water quality of existing private or public water supply wells will be degraded.

— **7. Infrastructure.** The applicant has made adequate provision of utilities and other infrastructure, including water supplies, sewerage facilities, and solid waste disposal required for the operation and the operation will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

8. Flooding. The operation will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

9. Nutrient management. The operation will meet the nutrient management standard contained in section 4206-A.

10. Odor. The operation will use best available management practices and will not have an unreasonable impact on existing uses. In determining whether an unreasonable impact on existing uses may occur, the agencies may consider the degree of interference with:

A. Public health or welfare;

- B. Enjoyment of life or use of affected property; and
- D. Plant, animal or marine life.

11. Carcass Disposal. The operation will dispose of carcasses from normal mortality and emergency situations so as not to unreasonably affect existing uses, human health, air quality, water quality or other natural resources.

Sec. 10. 7 MRSA § 4256 is enacted to read:

§ 4256. Administrative procedure. The administrative provisions of Title 38 and rules adopted pursuant thereto that apply to an operation requiring approval pursuant to Title 38, section 483-A and requiring a pre-application meeting also apply to an operation requiring review pursuant to section 4254 except as provided in this section. This section does not change the status of these rules as major substantive or routine technical rules, as determined under other provisions. The administrative provisions referenced covering subjects such as application procedures, transfers, hearing procedures, appeal procedures and enforcement are subject to the following exceptions and clarifications for purposes of operations requiring a permit pursuant to section 4254.

1. Permit application. Any person intending to develop a large concentrated animal feeding operation shall, before commencing construction or operation, notify the Maine Department of Agriculture, Food and Rural Resources in writing of the intent, nature and proposed location of the operation, together with such other information as the agencies may require. The applicant has the burden of proof to affirmatively demonstrate that each of the licensing criteria in statute and rule have been met.

- A. The Maine Department of Agriculture, Food and Rural Resources shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted.

- B. The agencies shall process the application within no more than 185 days, except as provided in 38 M.R.S.A. § 344-B. The processing period begins when an application is accepted as complete for processing.

2. Decision. The decision whether to approve, deny, modify, suspend or revoke a permit shall be made by the Commissioner of the Maine Department of Agriculture, Food and Rural Resources and the Commissioner of the Maine Department of Environmental Protection. An approval may be made subject to conditions.

3. Hearing

(a) A public hearing must be held prior to approval or denial of an application for approval pursuant to section 4254 for an operation including swine. The agencies shall hold a public hearing prior to approval or denial of any other operation or an application for amendment of a prior approval if requested in writing by 5 or more

persons or determined to be of significant public interest pursuant to Section 4252(4), and the agencies determine that there is credible conflicting technical information regarding a licensing criteria and it is likely that a public hearing will assist the decisionmaker in understanding the evidence.

(b) The hearing must be held by the Commissioner of the Maine Department of Agriculture, Food and Rural Resources and the Commissioner of the Maine Department of Environmental Protection. The board may not exert jurisdiction over review of the application.

(c) The hearing must be located near the site of the proposed operation.

(d) The Administrative Procedure Act, Title 5, Part 18, Chapter 375 applies.

4. Appeal. The applicant or other aggrieved person may request, in writing, a hearing before the board within 30 days after notice of the agencies' decision. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal. The board shall give written notice to persons that have asked to be notified of the decision.

The Nutrient Management Board and Board of Environmental Protection shall vote independently. An evenly divided vote of the board has the effect of affirming the agencies' decision. In the case of an evenly divided vote, the findings and reasoning of the board members voting in favor of the underlying decision constitute the board's reasoning in the affirmation.

5. Fees. The Commissioner of the Maine Department of Agriculture, Food and Rural Resources and the Commissioner of the Maine Department of Environmental Protection have the authority to establish a reasonable fee.

Sec. 12. 7 MRSA § 4957 is enacted to read:

§ 4257. Relationship to municipal ordinances. Nothing in this chapter may be construed to limit a municipality's authority under home rule to adopt ordinances in accordance with the so-called Right to Farm Law, Title 17, section 2805.

Sec. 12. Laws 1998, ch. 643, § 9 is amended to read:

Sec. 9. Moratorium on swine feeding operation. Notwithstanding [cite chapter/both], A person may not construct or operate a new swine feeding operation that confines and feeds 500 or more swine. For the purposes of this section, a "new swine feeding operation that confines and feeds 500 or more swine" means a lot or facility where 500 or more swine are confined and fed that was not operating as a swine feeding operation on March 1, 1998. This section is repealed May 1, 2000 ~~90 days after adjournment of the First Regular Session of the 119th Legislature.~~

Sec. 13. Rules. Rules or amendments to rules that have been or will be adopted pursuant to the Nutrient Management Act, 7 M.R.S.A. §§ 4201 et. seq.; Control of Diseases, 7 M.R.S.A. § 1751 et. seq.; the Site Location of Development law, 38 M.R.S.A. §§ 481 et. seq.; Storm Water Management Law, 38 M.R.S.A. § 420-D; and the Erosion Control Law, 38 M.R.S.A. § 420-C are also considered to be adopted pursuant to the Large Concentrated Animal Feeding Operation Act to the extent that they are consistent with the standards in this Act. This section does not change the status of these rules as major substantive or routine technical rules, as determined under other provisions.

Sec. 14. Memorandum of Understanding. The Maine Department of Agriculture, Food and Rural Resources and the Maine Department of Environmental Protection shall enter into a memorandum of understanding no later than 30 days after the effective date of this Act, setting forth the process among the three agencies to ensure a coordinated review of animal feeding operations pursuant to applicable environmental and land use laws. The memorandum of understanding shall also address coordination of enforcement of Chapter 749, Large Concentrated Animal Feeding Operations Act, by the agencies with enforcement authority. The Maine Department of Agriculture, Food and Rural Resources and the Maine Department of Environmental Protection have enforcement authority.

Sec. 15. Effective date. This Act takes effect May 1, 1999.

Sec. 16. Study. On or before January 1, 2000, the Department of Environmental Protection and Department of Agriculture, Food and Rural Resources shall, following consultation with the Land and Water Resources Council, submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the joint standing committee having jurisdiction over agricultural matters a report concerning the efficacy of existing and developing technologies to address environmental issues associated with swine feeding operations. The Department of Environmental Protection and the Department of Agriculture, Food, and Rural Resources shall request the assistance of the University of Maine, Agricultural Experiment Station and Cooperative Extension Service, and other appropriate state and federal agencies in studying this issue and developing the report. The report must include, but is not limited to, identification of available waste water treatment and odor control technologies and must recommend specific technologies necessary to ensure that new swine feeding operations with 300 or more animal units do not adversely affect public health or the environment, and must contain any recommended legislative changes. The committees having jurisdiction over natural resource matters and agriculture may report out legislation related to this subject.

SUMMARY

Section 1 of this bill adds a definition of “person” to the Nutrient Management Act.

Section 2 of this bill repeals and replaces Section 4205, “livestock operations permit”, of